leum International Inc. Singapore and he noted this in his copy of the telex from Polfracht. He then in his telexed reply dated January 28, 1975 to Polfracht stated:— "Charterers Phillips Petroleum International Inc. Singapore".

The next day Sharp received a telex from Polfracht which started as follows:—

"Below owners full counter (still subject approval charterers name) firm reply to-day here 16.30 Sydney time.

...."

Sharp then asked Hai Nguan for instructions on the owners full counter offer and received instructions in the form of a letter dated January 29, 1975 from Hai Nguan the relevant portion of which reads:—

"With reference to owners telex dated 29-1-1975 11.00 a.m. we counter offer subject to the following terms and conditions:—

'Charterer's Party: Phillips Petroleum International Inc. Singapore on behalf of P.T. Bina Alam, Jakarta, Indonesia.

...."

On receipt of this letter Sharp telexed Polfracht on January 30, 1975 as follows:—

"Attention Mr. Lysakowski. Yours 28th Charterers counter as follows:—

(1) Charterers: Phillips Petroleum International Inc. Singapore on behalf of P.T. Bina Alam, Jakarta, Indonesia.

(2) ...."

Up to that stage there can be no doubt that Sharp had acted on the express instructions of Hai Nguan as to who were to be the charterers and they followed strictly Hai Nguan's instructions. Polfracht then sent a telex on January 31, 1975 because of the ambiguity resulting from Sharp's two earlier telexes. They asked:

"Who are the charterers in the contract charterparty Phillips Petroleum International Inc. or P.T. Bina Alam Jakarta."

To this Sharp replied on February 1, 1975 as follows:—

"As advised previously charterers signing charterparty are Phillips Petroleum International Inc. We explained yesterday who Bina Alam are."

Sharp's case is that they said this on the express instructions of Hai Nguan but this is denied by Hai Nguan. It is to be observed that Sharp's telex also contained replies to other questions raised by Polfracht. In our opinion it would have been inconceivable, having regard to the manner in which Sharp took instructions from Hai Nguan throughout every stage of the negotiations that Sharp's telexed reply of February 1, 1975 was not in accordance with Hai Nguan's express instructions.

The learned judge in his judgment found that "it is more probable than not that (Sharp's reply) was sent ... without the authority of (Hai Nguan)". With respect we disagree and in our opinion the probabilities are the other way. Hai Nguan had copies of all incoming and outgoing telexes. They never corrected Sharp if in fact Sharp had not sought their instructions before saying to Polfracht that Phillips would be the charterers. They, not Sharp, arranged for the meeting to be held at Phillips' offices on February 8, 1975 for the signing of the charterparty.

Even if Sharp had replied without taking express instructions from Hai Nguan they were entitled to reply as they did as Hai Nguan had earlier expressly instructed them that the charterers were Phillips. In any event we are of the opinion that Hai Nguan, having regard to the course of dealings between them, had implicitly ratified Sharp's reply that Phillips are the charterers signing the charterparty.

We will hear the parties on the question of costs arising out of the Third Party proceedings.

Order accordingly.

Solicitors: *Godwin & Co.; Drew & Napier; T.Q. Lim.*

ONG TIAN KHIAM & ANOR. v. CHOA SO CHIN

[C.A. (Kulasekaram, Sinnathuray & Lai Kew Chai JJ.) October 20, 1981]

[Singapore — Civil Appeal No. 46 of 1981]

Land Law — Conveyancing — Refusal to complete sale — Whether justified — Whether vendors entitled to rescind sale — Differences in form of draft deed of assignment.

In this case the appellant had agreed to purchase a flat from D.B.S. (Private Ltd.) and had paid them the sum of $107,550 leaving a balance of $26,950, which was payable on completion and upon issue of certificate of fitness. The appellants agreed to sell the flat and some furniture to the respondent at the price of $230,000 to be apportioned as to $220,000 for the flat and as to $10,000 for the furniture. The respondent's solicitors sent a draft deed of assignment to the appellant's solicitors but the appellant's solicitor's insisted on amending the principal clauses of the draft deed. The respondent did not agree to the amendments and eventually the appellants gave written notice to the respondents purporting to rescind the agreement and to forfeit the 10% of the purchase price.

The respondent thereupon applied to the High Court for declarations and the Chief Justice declared (1) that the appellant's letter purporting to rescind the agreement between the appellants and the respondent was not a valid and effective notice to enable the appellants to forfeit the 10% deposit and to refuse to complete the sale; (2) the appellants were not entitled to rescind the sale in circumstances where the only reason for the failure on the part of the respondent to complete the sale within the stipulated period had been caused or substantially contributed by the appellant's refusal to agree to the terms of the assignment.

The appellants appealed.

Held: the differences between the appellants and the respondent over the draft deed of assignment were only in form and the appellants were unreasonable in insisting on their form. It was not unreasonable for the respondent to insist on her draft deed of assignment. In the circumstances the respondent was not in default and the appellants were not entitled to invoke Condition 30 of the (Revised) Singapore Conditions of Sale.

CIVIL APPEAL.

L.A.J. Smith (*Ng Liang Poh* with him) for the appellants.

Susan Jacob for the respondent.

Lai Kew Chai J. (delivering the judgment of the Court): This is an appeal against two declarations made by the learned Chief Justice on May 22, 1981 on the application of the respondent. It was declared that the appellants' letter of March 15, 1980 purporting to rescind the agreement between the appellants and the respondent was not a valid and effective notice to enable the appellants to forfeit the 10% deposit of the purchase price and to refuse to complete the sale. It was also declared that though completion was to take place on or before February 29, 1980 the

appellants were not entitled to rescind the sale in circumstances where the only reason for the failure on the part of the respondent to complete within the stipulated period had been caused or substantially contributed by the appellants' refusal to agree to the terms of the assignment.

After considering the evidence and hearing the arguments, we dismissed the appeal with costs. We now give our reasons.

By an agreement of sale and purchase dated May 28, 1979 and entered into between DBS Realty (Private) Limited ("the Developers") of the one part and the appellants of the other part, the appellants agreed to purchase a flat provisionally known as No. 209-J Pandan Valley, Singapore ("the flat") estimated to contain a floor area of 155 square metres at the price of $134,000. The appellants had paid the Developers $107,550, leaving a balance of $26,950 which was payable on legal completion and upon issue of the certificate of fitness.

Before legal completion of their purchase of the flat from the Developers, the appellants by an agreement ("the Agreement") dated January 16, 1980 and entered into with the respondent, the appellants agreed to sell the flat and some furniture to the respondent at the price of $230,000. It was subsequently agreed between the appellants and the respondent that the purchase price of $230,000 was apportioned as to $220,000 for the flat and as to $10,000 for the furniture. There was nothing in the Agreement to show that the appellants were selling the flat by way of assigning their rights title and interest and the burden of the agreement which was subsisting between the appellants and the Developers. Nothing turns on this issue because the respondent had subsequently indicated that she was prepared to accept an assignment, although she repeatedly stressed that it was a concession on her part. Completion of the sale and purchase under the Agreement was agreed to take place on or before February 29, 1980. The Agreement was subject to The (Revised) Singapore Conditions of Sale, Condition 30 of which states:

"If the purchaser shall fail to comply with these or the Special Conditions or the contract, the vendor shall be at liberty (after ten days' written notice to the Purchaser or his Solicitor) to treat the deposit as forfeited and without tendering an assurance to resell the property by Public Auction or Private Contract subject to such conditions and generally in such manner as he may think fit with power to vary or rescind any contract for sale buy in at any auction and resell and the deficiency in price (if any) arising on sale and all expenses of and incident to a resale or attempted resale shall be made good and paid by the purchaser and be recoverable by the vendor as liquidated damages, the purchaser receiving credit for the deposit, but any increase of price on a resale shall belong to the vendor."

Just before the completion date, the respondent obtained the necessary cashier's orders and was in fact ready, willing and able to complete. The respondent would have paid the appellants all monies due and payable upon completion. Her solicitors sent over the draft Deed of Assignment. After reciting the appellants' agreement to purchase the flat from the Developers at $134,000 and the appellants' agreement to assign to the respondent their rights and burden under the appellants' agreement with the Developers, the draft Deed of Assignment contained the following principal clauses:—

"1. In pursuance of the said agreement and in consideration of the sum of Dollars Eighty-five thousand five hundred ($85,500) now paid by the Assignee to the Assignors (the receipt whereof the Assignors hereby acknowledge) the Assignors hereby assign unto the Assignee. All the right title and interest of the Assignors of and in the flat described in the Schedule hereto and the benefit and burden of the Agreement TO HOLD the same unto the Assignee absolutely.

2. The Assignee hereby covenants with the Assignors that the Assignee for herself and her executors administrators and assigns will pay the said sum of Dollars One hundred and thirty-four thousand five hundred ($134,500) and will observe and perform the agreements and stipulations contained in the Agreement and on the part of the Assignors to be paid observed and performed and will keep the Assignors and their estate and effects effectually indemnified in respect thereof."

The appellants' solicitors insisted on amending the principal clauses of the draft Deed in the following terms:—

"1. In pursuance of the said agreement and in consideration of the sum of Dollars Two hundred and three thousand and fifty ($203,050) now paid by the Assignee to the Assignors (the receipt whereof the Assignors hereby acknowledge) the Assignors hereby assign unto the Assignee All the right title and interest of the Assignors of and in the Flat described in the Schedule hereto and the benefit and burden of the Agreement including the benefit of the sum of Dollars One hundred and seven thousand and five hundred and fifty ($107,550) paid thereunder TO HOLD the same unto the Assignee absolutely.

2. The Assignee hereby covenants with the Assignors that the Assignee for herself and her executors administrators and assigns will pay the said sum of Dollars Twenty six thousand nine hundred and fifty ($26,950) and will observe and perform the agreements and stipulations contained in the Agreement and on the part of the Assignors to be paid observed and performed and will keep the Assignors and their estate and effects effectually indemnified in respect thereof."

The appellants in their solicitors' letter of March 4, 1980 asserted that since the appellants were going to receive $203,050 from the respondent, they could not say it was for $85,500 only. They also claimed that the respondent's covenant would be for paying the balance of $26,950 and it accordingly could not appear on the face of the Deed that it was for the sum of $134,500. By the same letter they gave the respondent 10 days' notice to complete the sale and purchase under Condition 30 of The (Revised) Singapore Conditions of Sale.

The differences over the form of the Deed of Assignment were not resolved within the 10 days. On March 6, 1980 the appellants suggested that the respondent take out a vendor and purchaser summons under section 4 of The Conveyancing and Law of Property Act, Cap. 268 to resolve the difference. Four days later, the respondent gave notice that her draft Deed was correct and again expressed willingness to complete. On March 11, 1980 the appellants required the respondent to complete by 3 p.m. on March 12, 1980, which was one day before the expiry of the 10 days' notice given earlier. On March 15, 1980 the appellants gave written notice to the respondent purporting to rescind the Agreement and to forfeit the 10% of the purchase price.

We are of the view that the differences between the appellants and the respondents over the draft Deed of Assignment were only in form and that the appellants were unreasonable in insisting on their form. It was not unreasonable for the respondent to insist on her draft Deed of Assignment. In all the circumstances here, the respondent was not in default and

the appellants were not entitled to invoke Condition 30 of The (Revised) Singapore Conditions of Sale.

We accordingly affirmed the declarations made by the learned Chief Justice.

Appeal dismissed.

Solicitors: *L.A.J. Smith; Drew & Napier.*

J.H. KINOSHITA v. BOARD OF ARCHITECTS, SINGAPORE

[O.C.J. (Chua J.) February 3, 1981]

[Singapore — Originating Motion No. 68 of 1979]

Architects — Professional misconduct — Whether there was attempt by appellant to supplant another architect — No available code of professional conduct prescribed under s. 22(3) of Architects Act 1976 — Only guidelines available — Code of Professional Conduct of the Singapore Institute of Architects, Codes 9 & 10 — Code of Professional Conduct of the Architects Registration Council of the United Kingdom, Codes 3:4 & 3:5 — Code of Professional Conduct of the Royal Institute of British Architects, Codes 10 & 11.

The appellant, a qualified architect registered in Singapore, was found guilty of improper act or conduct for having undertaken to work for the Chartered Bank with the knowledge of the appointment and position of Messrs. Swan and MacLaren as architects for the Chartered Bank and without having obtained the permission of Messrs. Swan and MacLaren to do such work. He was suspended from practising as an architect for one month by the respondent. He appealed against the said decision.

Held, allowing the appeal: (1) there is now no available code of professional conduct and ethics prescribed under section 22(3) of the Architects Act 1976. There are, however, guidelines as to the standard of professional conduct required of an architect found in the SIA Code, the ARCUK Code and RIBA Code;

(2) looking at the SIA Code, the ARCUK Code, the RIBA Code, it is to be noted that an architect is not required to obtain the permission of the architect previously employed. All that the architect need do is to communicate with the architect previously employed and enquire and ensure that his engagement has been satisfactorily terminated (SIA Code); this the appellant did when he was appointed in March, 1977;

(3) under the ARCUK Code and the RIBA Code an architect need not even make such enquiry; all he need do is to notify his appointment to the architect previously employed;

(4) documentary and oral evidence indicated clearly that the appellant was engaged by Singapore Land alone to prepare a presentation of the possible development of the Bank's site and that the appellant's commission and work for Singapore Land had ceased when Singapore Land on December 22, 1976 agreed with the Chartered Bank to defer the negotiations for a joint venture and to accept appointment as the Bank's Development Managers for the development of the Bank site; therefore, the ingredients of the charge had not been proved, and the appellant should not have been found guilty by the Board.

Per curiam: By-law 13 of the Architects By-Law, 1941, was *ultra vires* the provisions of the Architects Ordinance and was null, void and invalid.

Cases referred to:-

(1) *Re Lee Kian Soo, An Architect* [1953] M.L.J. 195.

(2) *Chan Fook Wah* v. *Board of Architects* [1965] 2 M.L.J. 7.

ORIGINATING MOTION.

Lai Kew Chai for the appellant.

Harry Elias for the respondents.

Cur. Adv. Vult.

Chua J.: This is an appeal by James Hajime Kinoshita (the appellant), a qualified architect registered in Singapore, against the order of the Board of Architects, Singapore, (the Board) given on September 12, 1979, suspending him for one month to practise as an architect.

The appellant appeared before the Board on the following charge:

"You, James Hajime Kinoshita, a person registered under the Architects Act, are charged that you with knowledge of the appointment and position of Messrs. Swan and MacLaren as architects for the Chartered Bank (hereinafter referred to as 'the Bank') did undertake work or a commission for or on behalf of the Bank without having ascertained the position or having obtained the permission of Messrs. Swan and MacLaren to do such work and you are thereby guilty of such improper act or conduct as renders you, in the opinion of the Board, unfit to be an architect."

The facts are these. Sometime in early 1970 Swan and Maclaren, architects, received instructions from the Chartered Bank (the Bank) with regard to the development of the Bank's Head Office site at Battery Road (the Bank's site) in conjunction with the adjoining sites of which Swan and Maclaren supplied to the Bank at their request a schedule of ownership. The Bank proceeded to purchase the various sites concerned and at the same time on the Bank's instructions Swan and Maclaren proceeded with plans to an advanced stage, namely, that of conditional planning approval. The history of Swan and Maclaren's negotiations with the Planning Department and the Bank indicates the usual delays from both planners and owners. Swan and Maclaren's work on this project extended from 1970 to approximately the end of 1976.

On the opposite corner to the Bank's site is the site of John Little which was being developed by Singapore Land Ltd. (Singapore Land). Pat Pacific Architects later known as P.T. Architects were employed by Singapore Land for their project and the appellant was at the material times a partner of P.T. Architects in Singapore and a partner in Palmer & Turner, Hong Kong. The appellant has been registered as an architect in Singapore since November 1972.

The Planning Department advised Swan and Maclaren to discuss with P.T. Architects the issue of a pedestrian tunnel under Battery Road to link these two developments and Swan and Maclaren duly contacted P.T. Architects on this matter.

In November 1976, it was suggested by the Bank that Singapore Land became an equity partner with the Bank for the proposed redevelopment of the Bank's site and that a new company be formed to develop the project. Singapore Land replied positively and it was agreed that Singapore Land would prepare for the Bank's review their own ideas on how best to proceed. It was further agreed that Singapore Land would employ their own architect to assist them to prepare this presentation.

After the agreement between the Bank and Singapore Land, Mr. Alan Davis, the General Manager of Singapore Land, telephoned the appellant in Hong Kong at Palmer & Turner and told the appellant